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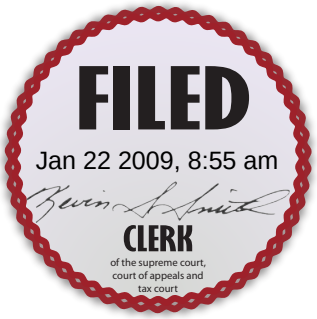

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IN THE
COURT OF APPEALS OF INDIANA

SHANE SLAGLE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 38A02-0805-CR-426
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JAY CIRCUIT COURT
The Honorable Brian D. Hutchison, Judge
Cause No. 38C01-0710-FB-11

January 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Shane Slagle was convicted after a jury trial of one count of armed robbery, a Class B felony.[1] He raises four issues on appeal, which we reorder and restate as:

1. Whether the trial court properly admitted evidence obtained pursuant to an investigatory stop;

2. Whether the prosecutor engaged in misconduct;

3. Whether the evidence was sufficient to support a conviction of armed robbery; and

4. Whether Slagle was properly sentenced.

We affirm.

FACTS AND PROCEDURAL HISTORY

Shane Slagle and Michael Adams were friends who both lived in Bellefontaine, Ohio. Adams planned to commit a robbery in order to get money to pay his rent. Slagle agreed to help him if Adams split the robbery proceeds. On September 29, 2007, Slagle drove Adams two hours to Portland, Indiana. Around 5:00 a.m., the two pulled up to the Budget Inn in Portland. Adams, who was wearing a mask and gloves, went inside to rob the motel. He struck the owner on the head with his gun and demanded he put all of the cash from the register into a yellow plastic bag. The cash totaled $119. Adams returned to the car where Slagle was waiting, and the two drove off. The motel owner then called the police.

[1] Ind. Code § 35-42-5-1.

At the same time, Sheriff's Deputy John Hankins drove by the Budget Inn and observed a sedan in the driveway. He noticed the lights were on and that the vehicle had Ohio license plates. The officer then went to a nearby gas station. While there, he received a dispatch that the Budget Inn had been robbed. Realizing the car he had just seen at the motel was likely involved, he started driving toward Ohio looking for the car.

After several minutes on Highway 67, the officer recognized the car he had seen at the Budget Inn and pulled the car over. Deputy Hankins handcuffed Slagle and Adams, then located the handgun Adams indicated was under the front seat. Police found $119 in cash, a yellow plastic bag, gloves, and a hat in the car.

On October 1, 2007, Slagle was charged with one count of armed robbery, a Class B felony. On December 18, 2007, Slagle moved to suppress the evidence found as a result of the traffic stop. A hearing was held on February 4, 2008, and the motion was denied the next day.

A jury trial commenced March 19, 2008. The jury found Slagle guilty of armed robbery. At the sentencing hearing, the court found no mitigating factors and two aggravating factors. Slagle was sentenced to twelve years in the Department of Correction.

DISCUSSION AND DECISION

1. Admission of Evidence

Slagle argues the trial court erred in admitting evidence discovered pursuant to Deputy Hankins' search of the vehicle because he did not have reasonable suspicion of criminal activity. We disagree.

We review a trial court's admission of evidence for an abuse of discretion. *Washington v. State*, 754 N.E.2d 584, 587 (Ind. Ct. App. 2003). We may reverse only if the court's decision was clearly against the logic and effect of the facts and circumstances before the court. *Id.*

A police officer may stop a person for investigative purposes without probable cause if the officer has a reasonable and articulable suspicion the person has engaged in criminal activity. *Wells v. State*, 772 N.E.2d 487, 489 (Ind. Ct. App. 2002) (citing *Terry v. Ohio*, 329 U.S. 1, 88 (1968)). Reasonable suspicion exists where the facts known to the officer, together with the reasonable inferences arising from the facts, would cause an ordinarily prudent person to believe criminal activity has occurred. *Id.*

Deputy Hankins had reasonable suspicion to believe criminal activity had occurred. He had driven by the Budget Inn and observed Slagle's car parked and running in the driveway just minutes before receiving a dispatch that the same motel had been robbed. Deputy Hankins, recalling the car had Ohio license plates, drove towards the state border. He found the vehicle he had seen outside the Budget Inn. The trial court did not abuse its discretion in admitting the evidence.

2. Prosecutorial Misconduct

Slagle argues the prosecutor engaged in misconduct by referring to Adams as a "snitch" and "rat" during his closing argument because the statement was not based on evidence in the record. We disagree.

When reviewing a claim of prosecutorial misconduct, we apply a two-step analysis. We first consider whether the prosecutor engaged in misconduct. *Reynolds v.*

State, 797 N.E.2d 864, 868 (Ind. Ct. App. 2003). If so, we then consider all of the circumstances of the case to determine whether the misconduct placed the defendant in a position of grave peril. *Id.*

Slagle did not make a timely objection on that ground at trial; therefore, he has waived appellate review of his prosecutorial misconduct claim. *Wiggins v. State*, 727 N.E.2d 1, 10 (Ind. Ct. App. 2000). However, a party may avoid waiver if the alleged error was fundamental. *Id.* To be fundamental, the error must be so prejudicial that it makes a fair trial impossible. *Id.*

The prosecutor's conduct was not fundamental error. At trial, Adams testified Slagle was not involved in the robbery. However, during the police investigation, he told Detective Penrod that Slagle was involved and agreed to drive him. During the prosecutor's closing arguments, he referred to Adams' inconsistencies and called him a "snitch." Adams testified at trial that other inmates never called him a snitch. However, he later testified that he told his grandmother he had been called a snitch while in prison. During closing argument, a prosecutor may argue both law and facts and may propound conclusions based on his analysis of the evidence. *Gasper v. State*, 833 N.E.2d 1036, 1042-43 (Ind. Ct. App. 2005). The prosecutor's statement was based on his analysis of the testimony at trial and was not misconduct.

3. Sufficiency of the Evidence

Slagle argues the evidence was not sufficient to support his conviction of armed robbery. It was.

When reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). The conviction will be affirmed if there is sufficient probative evidence from which the trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

There was ample evidence from which the jury could conclude Slagle committed armed robbery. The testimony of Deputy Hankins indicated Slagle was driving the car used in the armed robbery. Detective Penrod testified that when he interviewed Adams, Adams indicated he and Slagle had agreed to commit a robbery together, Slagle agreed to drive his vehicle, and they would share the profits. Items used in the robbery were found in the car in plain view. The evidence was sufficient for the jury to determine, beyond a reasonable doubt, that Slagle had acted as an accomplice in the armed robbery. *See* Ind. Code § 35-41-2-4 ("A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense . . . ."). As a result, we may not set aside Slagle's conviction.

4. Appropriateness of Sentence

Slagle argues his sentence is inappropriate and asks us to reduce it. We may revise a sentence authorized by statute if it is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We give deference to the trial court's decision, recognizing its special expertise in making sentencing decisions. *Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied.*

The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

Slagle received a twelve-year sentence following his conviction of armed robbery. The advisory sentence is ten years.[2] The State recommended a fifteen-year sentence based on Slagle's criminal history, which includes burglary, vandalism, and several juvenile adjudications. The trial court found Slagle's previous criminal record and past probation violations to be aggravating factors. Slagle traveled over two hours to Indiana to commit this robbery. He provided transportation for Adams, and a gun was involved in the robbery. The nature of the offense and Slagle's character do not suggest a twelve-year sentence is inappropriate.

Affirmed.

ROBB, J., and NAJAM, J., concur.

[2] Ind. Code § 35-50-2-5.